IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4475 OF 1995

Shaikh Farid Shaikh Amir .. Petitioner.
Vs.
Chhotu Abdul Sakour .. Respondent.

Mr.V.B.Rajure for the petitioner.
Mr.S.J.Rairkar for the respondent.

CORAM : D.B.BHOSALE, J.

DATED : 29TH AUGUST, 2005

P.C.:

. Heard learned counsel for the parties.

2. By means of this writ petition, the petitioner has challenged the order dated 23.2.1995 passed by the IInd Joint Civil Judge, Senior Division, Pune in 'C' Application No.109 of 1989 in Regular Darkhast No.398/83. The said application was filed by the petitioner seeking directions to the respondent to redeposit the original sale deed dated 31.8.1968 which, according to the petitioner, the respondent had obtained from the custody of Nazir by misleading the Court. The application was rejected with the following observations:

> . "Thus, it shows that the applicant himself was at fault and he by his own conduct made the court to pass order

> against him to deliver the original sale deed to the Decree Holder to whom it belongs. So there is no reason for the applicant to file this application and make hue and cry before the court. The above reproduced portion of Exhibit 1, Exhibit 23 and Exhibit 25 evidences the fact that applicant who was fully aware of all these facts had made false averment before the court knowingly and intentionally. Thus, applicant is estopped from claiming back the document which was returned by the court duly, in favour of opponent. It is also not the case that court acted in a very hurried manner or that the party acted ina very fact way. Infact the application was filed by the present opponent on 18.2.1986 it was ordered to be returned on 4.12.1985 and it was infact returned on 5.1.1987. Thus, there was ample time for the present applicant to have his objection raised at any time. Thus his application must fail".

3. In this view of the matter while rejecting the said application, the learned Judge convicted the petitioner under section 344 of the Criminal Procedure Code for giving false evidence before the court and sentenced him to pay fine of Rs.500/- and in default to suffer simple imprisonment for seven days. Mr.Rajure, learned counsel for the petitioner, though initially raised a basic question as to whether the learned Judge while passing the order under section 344 of the Code in application No.109 of 1999 had followed the due procedure prescribed for summary trial, fairly stated that the petitioner did not make the false

averments with an intention to use such evidence in the said proceedings and that he is prepared to tender an apology to the court for making such averments in the application. Mr.Rairkar, learned counsel for the respondent submitted that let the petitioner tender unconditional apology and it may be recorded in the order. He further submitted that rest of the order be maintained. Keeping the submissions of the learned counsel for the parties in view and considering that more than ten years have passed and no prejudice, loss or legal injury is caused to the respondent I am satisfied that the following order shall meet the ends of justice:

1. The unconditional apology tendered by the petitioner is accepted.

2. The conviction under section 344 of the Code is quashed and set aside.

3. The order dismissing the application filed by the petitioner seeking return of the original sale deed dated 31.8.1968 stands confirmed.

. The rule, accordingly, stands disposed of.

(D.B.Bhosale, J.)